



REPUBLIC OF KENYA

Cases in Magistrate Courts

Criminal Case 26 of 2013

REPUBLIC.....PROSECUTOR

VERSUS

TOM MBOYA ANYANGO.....ACCUSED.

RULING

The accused is charged with murder c/sec. 203 as read with S. 204 of the Penal Code.

He pleaded not guilty to the charge. His matter was partly heard before the High Court in Kisii before it was transferred to this court once it was established.

He was through his Advocate applied for bond pending the trial. The Advocate Miss Nekesa – urged this court to release him on bond on reasonable conditions. She submitted that it is his right under Article 49 of the Constitution. That he is a widower with 4 children who are all in school. The oldest being 10 years. That he is the sole breadwinner and has undertaken to abide by all the conditions and terms that this court shall impose. That he shall attend all the hearings.

The application was opposed. Miss Valery, Counsel for the State submitted that she was objecting on one ground: that the accused killed his wife. That if released on bond he was likely to interfere with witnesses and also be met with hostility from the family. She urged the court to withhold bond but give an early hearing date.

In response Miss Nekesa, Advocate for the accused submitted that no compelling reasons had been shown. That the accused is innocent until proven guilty and further that it was not proved that the family will turn hostile if the accused is released on bail. She contended that if released the accused shall demonstrate that he is a good citizen and will not abscond.

I have considered the rival submissions carefully. I do agree with Miss Nekesa – Learned Advocate for the accused that the accused is presumed innocent until proved guilty. That he is suspected of killing his wife cannot of itself be a reason to withhold bail/bond. The state needed to demonstrate that there is a good reason to do that since under Art 49(1) (h) the Accused is entitled to bail/bond unless there are compelling reasons not to release him. That he would interfere with witnesses or that he intended to abscond would be compelling reasons but that must be demonstrated. The learned state counsel does not state that she has proved that he shall do either. Her submission is that he is likely to interfere with witnesses and also be met with hostility.

Accordingly the application is allowed but noting the seriousness of the offence it shall be upon the following terms:

1. *That the accused shall execute a bond of Kshs.3 (three) million with 2 sureties of like amount.*
2. *That the sureties shall be examined/approved by the Deputy Registrar.*
3. *That the accused shall attend court once every month until conclusion of his trial.*
4. *Hearing on 27.6.2013.*

Ruling dated, signed and delivered at Homa Bay this 3rd day of May .2013.

E.N. MAINA
JUDGE.

In the presence of:

Eudice Okombo Dholuo interpreter.

Miss Valery for the Republic

Miss Nekesa for the Accused.

Accused person.